

EXHIBIT F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JANNIE PILGRIM, GIOVANNA HENSON, JESAN
SPENCER and BRENDA CURTIS,

Plaintiffs, Case No.

-against- 07CIV 6618

THE MCGRAW-HILL COMPANIES, INC.,

Defendant.

ORIGINAL

-----X

April 15, 2008

2:30 p.m.

Deposition of KENNETH CARUSO, held at
the offices of Proskauer Rose, LLP, 1585
Broadway, New York, New York, pursuant to
notice, before Renate Reid, Registered
Professional Reporter and Notary Public of
the State of New York.

1 Kenneth Caruso

2 Marschke?

3 A. I was.

4 Q. And to whom did he report?

5 A. He reported to David Murphy.

6 Q. Who is David Murphy?

7 A. I believe his title is executive
8 vice president of human resources for the
9 McGraw-Hill companies.

10 Q. When it was -- the offer presented
11 itself that you go to JD Power &
12 Associates, was that verbally or in
13 writing?

14 A. Initially, the opportunity was
15 presented to me verbally, before I decided
16 to accept. Once I made it clear that I
17 would be willing to make the transfer, the
18 offer was presented in writing.

19 Q. When did you make the decision to
20 accept the offer?

21 A. In June of 2006.

22 Q. Can you be more specific; when in
23 June?

24 A. I can't.

25 Q. At the time that you made -- you

1 Kenneth Caruso

2 decided to accept the offer, what were you
3 doing at McGraw-Hill, and working on any
4 specific projects at that time?

5 MS. BLOOM: Object to the form of
6 the question. You can answer.

7 A. I was working as the human
8 resources generalist for Business Week.
9 No special projects, to my recollection.

10 Q. Well, it would seem to me, then,
11 in order for you to leave, you had to make
12 arrangements for your departure, is that
13 correct, with the company?

14 MS. BLOOM: Object to the form of
15 the question. You can answer.

16 MR. SOLOTOFF: I'll rephrase the
17 question.

18 Q. Before leaving, did you plan on
19 how you were going to leave McGraw-Hill in
20 New York City, in terms of your work?

21 A. Well, my -- the position that I
22 held at Business Week was subsequently
23 posted so that a new candidate or a new
24 individual could be identified for the
25 role.

1 Kenneth Caruso

2 Q. And when was it posted?

3 A. I don't know the exact date.

4 Q. Do you know who filled your
5 position after you left?

6 A. It was John Quinonas.

7 Q. What title did he assume when he
8 filled that position?

9 A. I believe it was also senior
10 director of human resources.

11 Q. It was human resources working in
12 Business Week?

13 A. Yes.

14 Q. Do you know when he filled that
15 role?

16 A. In September of 2006.

17 Q. How long was that position vacant,
18 that is, from the time you departed to go
19 to California to work for JD Power &
20 Associates, to the time that Mr. Quinonas
21 filled your old position?

22 A. Approximately six or seven weeks,
23 from August 1st -- I performed both roles
24 for that period of time.

25 Q. What were the both roles?

1 Kenneth Caruso

2 A. The Business Week role and the JD
3 Power & Associates role.

4 Q. Where did you perform those both
5 roles; was that out of California --

6 A. Yes. In West Lake Village,
7 California.

8 Q. Who filled the position that Jesan
9 Spencer had?

10 MS. BLOOM: Objection.

11 MR. SOLOTOFF: I'll withdraw the
12 question.

13 Q. Did there come a time that Jesan
14 Spencer was no longer working under your
15 supervision?

16 A. Yes.

17 Q. When was that?

18 A. Jesan transferred out of the
19 Business Week human resources team, I
20 believe, in the end of May of 2006.

21 Q. And what was her position before
22 she transferred?

23 A. I believe it was senior manager of
24 human resources.

25 Q. Was she one of your direct

1 Kenneth Caruso

2 reports?

3 A. She was.

4 Q. Were there any others?

5 A. Sheila Mitchell.

6 Q. And anyone else?

7 A. No.

8 Q. Who filled Jesan Spencer's
9 position after she transferred out from
10 under your supervision?

11 A. It was filled after I had
12 transferred out to JD Power & Associates.

13 Q. You said that was in or around
14 June of 2006?

15 A. No. I transferred to JD Power &
16 Associates on August 1st of 2006.

17 Q. Who filled Ms. Spencer's position,
18 between the time she was transferred in
19 May out of her role and before you went to
20 JD Power?

21 MS. BLOOM: Object to the form of
22 the question. You can answer.

23 A. The position remained open.

24 Q. Was there a time where the
25 position was no longer remained open?

1 Kenneth Caruso

2 well aware that your question implies
3 information that's not accurate and
4 doesn't accurately reflect his earlier
5 testimony.

6 MR. SOLOTOFF: Again, you're
7 speaking for him.

8 MS. BLOOM: I'm not speaking for
9 him.

10 Q. Do you recall your earlier
11 testimony?

12 MS. BLOOM: Excuse me. I'm not
13 speaking for him, but it is my job to
14 insure that the questions are
15 appropriate, and that one wasn't.

16 MR. SOLOTOFF: It is.

17 MS. BLOOM: We'll have to agree to
18 disagree on that.

19 MR. SOLOTOFF: Okay.

20 Q. Was Jesan Spencer transferred to
21 BIG?

22 A. Jesan began working with BIG, I
23 think, on May 31st, 2006.

24 Q. On May 31st, 2006, when she began
25 working at BIG, was that as a result of a

1 Kenneth Caruso

2 transfer?

3 A. It was as a result of a transfer.

4 Q. Did you approve of the transfer?

5 MS. BLOOM: Object to the form of
6 the question. You can answer.

7 A. I was not involved at all in the
8 transfer discussions.

9 Q. Whether you were involved in the
10 transfer discussions or not, did you
11 approve of the transfer?

12 MS. BLOOM: Object to the form of
13 the question. You can answer.

14 A. I was not asked to approve.

15 Q. Did you fight for Jesan Spencer to
16 stay in her job under your supervision?

17 A. I did not.

18 MR. SOLOTOFF: I'd like to have
19 this marked as Caruso number 2. It
20 had been previously marked as O'Neill
21 12.

22 (Caruso Exhibit 2 was marked for
23 identification).

24 Q. Can you, please, identify this
25 document.

1 Kenneth Caruso

2 counseling.

3 Who is the "we" referring to?

4 A. I'm not sure the precise reference
5 that Brett intended there. The way I
6 interpreted that was, the human
7 resource -- the larger human resources
8 organization.

9 Q. Did the larger organization
10 include yourself as the "we", in your
11 goals in your PMP?

12 MS. BLOOM: Object to the form of
13 the question, to the extent it
14 mischaracterizes the testimony.
15 There's been no testimony about any
16 goals in this PMP.

17 You can answer.

18 A. My goal, as outlined at the
19 beginning of the year, is not relevant to
20 this statement. My goal is to assess the
21 staff and coach the staff to appropriate
22 performance thresholds.

23 Q. Did you coach Jesan Spencer that
24 it was the company's interest to counsel
25 her out of the Business Week business?

1 Kenneth Caruso

2 MS. BLOOM: Object to the form of
3 the question. You can answer.

4 A. I never had any conversations with
5 Jesan about a transfer out of the Business
6 Week organization HR team.

7 Q. The next sentence says, "this will
8 not be easy, recognizing that Ken's
9 natural style is one that is most likely
10 more aggressive results oriented than
11 either of these people are accustomed to".

12 Who wrote that?

13 A. Brett Marschke.

14 Q. And who are, "these people"?

15 A. I interpreted it as a reference to
16 Sheila and Jesan.

17 Q. To Sheila Mitchell and Jesan
18 Spencer, correct?

19 A. Correct.

20 Q. It says, "it will be up to Ken to
21 insure that he has effective relationships
22 with his staff, even if we pursue the
23 route of counseling them out of the
24 business".

25 What does that mean, "up to you"?

1 Kenneth Caruso

2 A. I interpreted that to mean that my
3 responsibility was to insure that I had
4 effective relationships with my staff.

5 Q. While they pursue the route of
6 counseling them out of the business?

7 MS. BLOOM: Object to the form of
8 the question. Mischaracterizes the
9 document and the testimony.

10 MR. SOLOTOFF: I'll rephrase it.

11 Q. Was that your understanding, that
12 that was to -- that you were to maintain
13 effective relationships while the company
14 pursued the route of counseling them out
15 of the business?

16 MS. BLOOM: Objection to the form
17 of the question. Mischaracterizes the
18 document. You can answer.

19 THE WITNESS: I'm sorry, can you
20 repeat the question?

21 (Record was read back).

22 A. My understanding was that I was to
23 maintain effective relationships with
24 them, regardless of what was occurring by
25 or from the larger organization.

1 Kenneth Caruso

2 Q. To your knowledge, was Jesan
3 Spencer counseled out of the business?

4 A. No.

5 Q. How do you know that?

6 A. To my knowledge, Jesan's role
7 within BIG, it was never presented to
8 me -- I was not involved in those
9 discussions and it was never presented to
10 me as her being counseled out.

11 Q. That was in your PMP, was it not?

12 MS. BLOOM: Object to the form of
13 the question. Mischaracterizes the
14 document. What was in her PMP?

15 MR. SOLOTOFF: For her to be
16 counseled out.

17 A. No, it's not.

18 Q. That's your testimony?

19 A. It presents a -- my understanding
20 of the document and the comments, is that
21 it presents a speculative, even if.

22 Q. Does it present an expectation?

23 A. No.

24 Q. Does it define how it's supposed
25 to be accomplished?

1 Kenneth Caruso

2 MS. BLOOM: Object to the form of
3 the question. Mischaracterizes his
4 testimony and the document.

5 A. It does not define how or states
6 conclusively if it is to be accomplished.

7 Q. Where it says, "this will not be
8 easy", why is that in this statement, to
9 your knowledge, unless it was their
10 intention to do so?

11 MS. BLOOM: Objection.
12 Mischaracterizes his testimony and the
13 document.

14 MR. SOLOTOFF: I'm asking the
15 question, Counsel.

16 MS. BLOOM: Excuse me. You can't
17 ask questions that mischaracterize
18 documents or his testimony.

19 MR. SOLOTOFF: The record has your
20 objection.

21 Q. You understand the question?

22 MS. BLOOM: Actually, the record
23 doesn't have my objection, because you
24 were talking over me. I object to
25 your question. It mischaracterizes

1 Kenneth Caruso

2 the testimony and the document. It
3 doesn't say this will --

4 MR. SOLOTOFF: Now, you're
5 testifying.

6 MS. BLOOM: I'm not testifying.

7 MR. SOLOTOFF: Now, you're
8 testifying. You made your objection,
9 but now you just stepped over your
10 objection.

11 Do you want to tell the witness what
12 to say?

13 MS. BLOOM: You can argue with me
14 all you want.

15 MR. SOLOTOFF: I will. Because
16 you're stepping over your boundaries.

17 MS. BLOOM: Reading pieces of
18 statements in a document
19 mischaracterizes the document, and you
20 compound the problem with your
21 question when it also mischaracterizes
22 the witness's testimony.

23 MR. SOLOTOFF: That's your
24 objection.

25 MS. BLOOM: That is my objection.

1 Kenneth Caruso

2 Q. Please answer the question.

3 MS. BLOOM: If you can.

4 A. I interpreted the phrase, "this
5 will not be easy", as referencing the fact
6 that I was expected to maintain effective
7 relationships, and no reference to the
8 speculative about counseling them out of
9 the business.

10 Q. It says, "we need to raise the
11 bar, but need to do so in a way that
12 people continue to feel that they are
13 treated fairly, with respect. Sometimes
14 this can be a fine line".

15 Who wrote that?

16 A. Brett Marschke.

17 Q. Does that sound like a guidance to
18 you, in some form?

19 MS. BLOOM: Object to the form of
20 the question. You can answer.

21 A. I interpreted that as a
22 constructive coaching statement from
23 Brett.

24 Q. Now, you knew that this was
25 written in your PMP before you signed

1 Kenneth Caruso

2 Q. Have you ever heard of employees
3 complaining that -- about being managed
4 out of the company?

5 A. Have I ever heard employees
6 complaining about being managed out of the
7 company?

8 Q. Yes.

9 A. I have not been involved in
10 conversations on that topic, as it relates
11 to the broader McGraw-Hill corporation.
12 The vocabulary for the business, in my
13 experience within McGraw-Hill, always
14 referenced the specific business area or
15 business unit in which you were working.
16 In this case, Business Week.

17 Q. It doesn't use the words,
18 "Business Week" does it, in this sentence?

19 A. It does not.

20 Q. Have you ever heard the expression
21 made by an employee that they felt that
22 they were being managed out of the
23 company? Have you ever heard that
24 expression, by any employee, while you
25 were a senior director of human resources?

1 Kenneth Caruso

2 A. I have heard the term. It's not
3 one that we use particularly within
4 McGraw-Hill.

5 Q. Have you ever heard the term, in
6 McGraw-Hill, by employees that they
7 complained that they're being set up to
8 fail?

9 MS. BLOOM: Object to the form of
10 the question. You can answer.

11 A. Again, I'm aware of that concept.
12 It's not one about which I've heard
13 specific complaints at McGraw-Hill.

14 Q. What does that concept mean to
15 you?

16 A. It actually references, in my
17 opinion, the way that goals are defined
18 and their adherence to those SMART
19 principles that we discussed. In other
20 words, if a goal is not specific,
21 measurable, achievable or relevant, then,
22 the employee's ability to be successful
23 against those goals might be called into
24 question.

25 Q. Did there come a time where you

1 Kenneth Caruso

2 learned that Jesan Spencer had made a
3 complaint about your conduct as a
4 supervisor?

5 MS. BLOOM: Object to the form of
6 the question. You can answer.

7 A. I am aware that Jesan had made a
8 complaint about my conduct. I don't
9 believe it was specifically related to my
10 supervision of her.

11 Q. Weren't you her supervisor?

12 A. I was.

13 Q. And what was the nature of the
14 complaint concerning your conduct?

15 A. I believe that she had complained
16 about my use of language in the office.

17 Q. What kind of language?

18 MS. BLOOM: What kind of language
19 did she complain about; is that the
20 question?

21 Q. You referred to language.

22 What do you mean by language?

23 MR. SOLOTOFF: I'll rephrase the
24 question.

25 A. My reference is to colorful

1 Kenneth Caruso

2 language.

3 Q. What does that mean?

4 A. Curse words.

5 Q. What curse words?

6 A. As I recall, it was about my use
7 of the word, "bitch" and the word, "fuck".

8 Q. Do you deny ever using those words
9 in the presence of Jesan Spencer?

10 MS. BLOOM: Objection to the form
11 of the question. You can answer.

12 MR. SOLOTOFF: I'll rephrase the
13 question.

14 Q. Did you use the word "bitch" in
15 the presence of Jesan Spencer?

16 A. I did. It was never a reference
17 to Jesan, and only used as an expletive in
18 the context of phrases like "son of a
19 bitch" or "what a bitch", meaning bitch of
20 a situation, etcetera.

21 Q. Did it refer to a woman -- women
22 as being bitches, like, "she's a bitch"?

23 A. Not that I recall.

24 Q. If Jesan said that you made the
25 reference to the word bitches in reference

1 Kenneth Caruso

2 to women, in her presence, would she be
3 lying?

4 A. She would be.

5 Q. Do you think the word bitch is an
6 appropriate word in the workplace?

7 A. I do not.

8 Q. Do you think it's appropriate to
9 use the reference of regarding a bitch, as
10 offensive to Jesan Spencer?

11 MS. BLOOM: Object to the form of
12 the question. You can answer.

13 THE WITNESS: I'm sorry, I didn't
14 understand the question.

15 MR. SOLOTOFF: I'll rephrase the
16 question.

17 Q. How often did you use the word
18 bitch in Jesan Spencer's presence?

19 MS. BLOOM: Objection.

20 Mischaracterizes his testimony. You
21 can answer.

22 A. I'm not aware of the exact number
23 of times.

24 Q. Was it more than once?

25 A. It was.

1 Kenneth Caruso

2 Q. Was it more than ten times?

3 A. Approximately ten.

4 Q. Was it every day?

5 A. Not to my recollection.

6 Q. Almost every day?

7 A. No. My use of the word would
8 occur in high stress situations, when
9 there was a large volume of work to get
10 done and I would become stressed as a
11 result of, you know, outside factors.

12 Q. Give us every context in which you
13 used the word bitch.

14 A. I'm sorry?

15 Q. Give us every context in which you
16 used the word bitch.

17 A. As I said, it was a -- as an
18 expletive, to blow off steam, and usually
19 as part of, you know, one of two phrases;
20 either "son of a bitch" or "what a bitch",
21 to refer to the situation.

22 Q. Ms. Spencer complained about your
23 use of the word bitch.

24 Was it appropriate for her to
25 complain about it, if you used it in the

1 Kenneth Caruso

2 context in which you just described?

3 A. It was.

4 MR. SOLOTOFF: Read my question
5 again, and his answer, please.

6 (Record was read back).

7 Q. Why was it appropriate for her to
8 complain?

9 A. Because those are inappropriate
10 words for the workplace, and they made her
11 uncomfortable.

12 Q. Could you see if she was -- could
13 you see, by looking at her, whether she
14 was uncomfortable when you made those
15 statements?

16 A. I was unaware that she was being
17 made uncomfortable by these words, until
18 her complaint was brought to my attention
19 from Brett.

20 Q. When was it brought to your
21 attention?

22 A. I believe, in December of 2005.

23 Q. Could you understand how Jesan
24 Spencer, as an African/American female,
25 would be offended by the use of the word

1 Kenneth Caruso

2 A. I did.

3 Q. What were your words?

4 A. At the time?

5 Q. Yes.

6 A. I would have said, I'm sorry.

7 Q. What did you say?

8 A. I believe I said, I'm sorry.

9 Q. Did you say what you were sorry
10 about?

11 A. For using the word and for
12 offending her.

13 Q. After that, did you continue to
14 use the word, bitch, in her presence?

15 A. Not to my recollection, no. I do
16 remember a number of weeks after that
17 first conversation, actually speaking with
18 her again on the topic, to ask if, in
19 accordance with my original commitment to
20 her to stop, I had, in fact, stopped. And
21 she -- her feedback to me, at the time,
22 was that yes.

23 Q. When was that conversation?

24 A. Probably three weeks afterwards,
25 four weeks after.

1 Kenneth Caruso

2 Q. Four weeks after your initial
3 apology?

4 A. My initial apology. A number of
5 weeks afterwards.

6 Q. After that conversation, did you
7 then continue to use the word, bitch, in
8 her presence?

9 A. I don't think so.

10 Q. You're not sure?

11 A. No, I'm sure I did not.

12 Q. Did you have any other
13 conversations with Brett Marschke
14 regarding Jesan Spencer's complaints,
15 other than the one you've already
16 testified to?

17 A. Not another conversation, as it
18 related to my use of language. There was,
19 later then, in 2006, another complaint
20 that Jesan made, I believe first to Sheila
21 O'Neill and then to Brett. Brett found
22 out through Sheila.

23 Q. When was that conversation with
24 Brett concerning Sheila O'Neill's comment
25 to Brett?

1 Kenneth Caruso
2 with the Equal Employment Opportunity
3 Commission?

4 A. I did not.

5 Q. Did you discriminate against Jesan
6 Spencer?

7 A. I did not.

8 Q. Did you create a hostile work
9 environment for Jesan Spencer as an
10 employee under your supervision?

11 A. I did not.

12 Q. Did you retaliate against Jesan
13 Spencer?

14 A. I did not.

15 MR. SOLOTOFF: I have no further
16 questions.

17 (Recess taken from 7:01 to 7:05 p.m.)

18 CONTINUED EXAMINATION BY

19 MR. SOLOTOFF:

20 Q. Did you ever write a memorandum
21 and formal complaint against Jesan
22 Spencer?

23 A. I did.

24 Q. When was that?

25 A. In mid-June, 2006.

1 Kenneth Caruso

2 Q. Why?

3 A. I wrote it to insure that my
4 perspectives were represented.

5 MR. SOLOTOFF: I have no further
6 questions.

7 EXAMINATION BY

8 MS. BLOOM:

9 Q. Mr. Caruso, you testified a short
10 while ago, in response to a question from
11 counsel, that you did not believe that
12 your employment could be terminated if the
13 company found that you had violated the
14 EEOC policy.

15 Is that your understanding?

16 A. To clarify, if a violation of the
17 EEOC policy were found, my termination
18 is -- would be possible, would be likely.

19 Q. So, it's your testimony here today
20 that if you were found to have violated
21 the company's EEO policy, the company
22 potentially could terminate your
23 employment?

24 A. That's right.

25 MR. SOLOTOFF: Note my objection.